

Exhibit 5

*State of California ex. rel. Ven-A-Care of the Florida Keys, Inc. v.
Abbott Laboratories, Inc., et al.*

Exhibit to the Declaration of Nicholas N. Paul in Support of Plaintiffs' Motion for Summary
Judgment as to Defendant Dey

CAUSE NO. GV002327

THE STATE OF TEXAS) IN THE DISTRICT COURT
EX REL.)
VEN-A-CARE OF THE)
FLORIDA KEYS, INC.,)
PLAINTIFFS,)
)
VS.) TRAVIS COUNTY, TEXAS
)
DEY, INC.; ROXANE)
LABORATORIES, INC.; WARRICK)
PHARMACEUTICALS CORPORATION;)
SCHERING-PLough CORPORATION;)
SCHERING CORPORATION;)
LIPHA, S.A.; MERCK-LIPHA, S.A.;)
MERCK, KGAA; AND EMD)
PHARMACEUTICALS, INC.,)
DEFENDANTS.) 53RD JUDICIAL DISTRICT

ORAL AND VIDEOTAPED DEPOSITION OF

CHARLES A. RICE
VOLUME III

MARCH 24TH, 2003

ORAL AND VIDEOTAPED DEPOSITION OF

CHARLES A. RICE, PRODUCED AS A WITNESS AT THE INSTANCE
OF THE STATE OF TEXAS AND DULY SWEORN, WAS TAKEN IN THE
ABOVE-STYLED AND NUMBERED CAUSE ON THE 24TH OF MARCH,
2003, FROM 8:11 A.M. TO 6:08 P.M., BEFORE
DEBRA L. SIETSMA, CSR IN AND FOR THE STATE OF TEXAS,
REPORTED BY MACHINE SHORTHAND, AT THE OFFICES OF
FLECKMAN & MCGLYNN, P.L.L.C., 515 CONGRESS,
SUITE 1800, AUSTIN, TEXAS, PURSUANT TO THE TEXAS RULES
OF CIVIL PROCEDURE AND THE PROVISIONS AS PREVIOUSLY
SET FORTH.

1 THE MARKET -- AND PUBLISHING AN EXTRAORDINARILY HIGH
2 AWP CAN ONLY BE FOR ONE REASON, AND THAT IS TO
3 MANIPULATE MARKET SHARE ON THE BASIS OF THE SPREAD.
4 I -- I FIND THAT OBJECTIONABLE, AND I DON'T THINK THEY
5 SHOULD HAVE DONE IT.

6 Q. OKAY. NOW, YOU SAY THAT WHEN -- WHEN DEY
7 CAME TO MARKET WITH A NEW DRUG AND PROVIDED INCENTIVES
8 TO -- TO PROVIDERS TO USE DEY'S NEW PRODUCT BY
9 INCREASING THE SPREAD ON MEDICARE AND MEDICAID
10 REIMBURSEMENT, THAT YOU BELIEVE MEDICAID SAVED MONEY
11 BECAUSE THE AWP ON THE GENERIC WAS LOWER THAN THE
12 BRAND, CORRECT?

13 A. THE WAC WAS LOWER THAN THE BRAND AS WELL.

14 Q. OKAY. LET'S TALK ABOUT AWP RIGHT NOW.

15 ISN'T IT A FACT, SIR, THAT -- THAT DEY
16 WOULD SET THE AWP AT -- AT TEN PERCENT LESS THAN THE
17 BRAND AWP WHEN IT WOULD LAUNCH A PRODUCT?

18 A. APPROXIMATELY, YES.

19 Q. AND THEN IT WOULD LEAVE IT THERE GOING
20 FORWARD, CORRECT?

21 A. THAT'S MY UNDERSTANDING, YES.

22 Q. ALL RIGHT. SO EVEN THOUGH THE ACTUAL PRICES
23 IN THE MARKETPLACES WERE FALLING AS GENERIC
24 COMPETITION BECAME HEALTHY AND BROUGHT THE PRICES OF
25 THE GENERICS DOWN, CORRECT?